

July 16, 1999

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION ON APPLICATION FOR PRELIMINARY PLAT APPROVAL.

SUBJECT: Department of Development and Environmental Services File No. **L98P0040**
Proposed Ordinance No. **1999-0306**

SAMMAMISH HEIGHTS ESTATES

Preliminary Plat Application

Location: Between 218th Avenue Northeast and 220th Avenue Northeast at Northeast 11th Street

Owner: William A. Looney
PO Box 68456
Seattle, WA 98168

Developer: Hansen Investments, LLC
1244 - 218th Avenue NE
Redmond, WA 98053

SUMMARY OF DECISION:

Department's Preliminary Recommendation:	Approve, subject to conditions
Department's Final Recommendation:	Approve, subject to conditions (modified)
Examiner's Decision:	Approve, subject to conditions (modified)

PRELIMINARY MATTERS:

Application submitted:	October 5, 1998
Complete application:	November 2, 1998

EXAMINER PROCEEDINGS:

Hearing Opened:	June 29, 1999, 9:30 AM
Hearing Closed:	June 29, 1999, 12:07 PM

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Constitutional requirements: takings
- Flooding
- Road improvements
- Surface water drainage

SUMMARY:

The preliminary plat application is **APPROVED**. The Applicant cannot be required to solve neighborhood circulation and drainage problems beyond the impacts of plat development.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Owner:	William A. Looney P.O. Box 68456 Seattle, WA 98168
Developer:	Hansen Investments, LLC 1244 - 218 th Ave. NE Redmond, WA 98053
Engineer:	Peterson Consulting Engineers 320 Second Avenue South Kirkland, WA 98033
STR:	SE, SW, 28-25-06
Location:	Between 218 th Avenue NE and 220 th Avenue NE at NE 11 th Street
Zoning:	R6-P
Acreage:	9.71 Acres
Number of Lots:	9

Density: 1.08 dwelling units per acre
Lot Size: Ranging from 9,000 square feet to 23,000 square feet
Proposed Use: Single Family Detached
Sewage Disposal: Sammamish Plateau Water and Sewer District
Water Supply: Sammamish Plateau Water and Sewer District
Fire District: Fire District # 10
School District: Lake Washington School District
Complete
Application Date: November 2, 1998

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's preliminary report to the King County Hearing Examiner for the June 29, 1999, public hearing are found to be correct and are incorporated herein by reference. The LUSD Staff recommends approval of the application, subject to conditions.
3. Sammamish Heights Estates is an application by Hansen Investments LLC for a preliminary plat approval to develop nine single family lots in the R6-P zone on 9.71 acres. The property is situated on the Sammamish Plateau at a location lying north of Inglewood Hill Road and west of Sahalee Way.
4. The developable portions of the site lie on the eastern and western flanks of the property and are separated by a central section of very steep slopes. The nine lots proposed for current development lie on the property's eastern flank and are accessed by Northeast 11th Street from the Demery Hill neighborhood. Storm drainage facilities and a reserve tract for the future development of a further seven lots are proposed for the western flank of the site. Future residential development on the reserve tract, which currently is not serviced by a constructed road or utility hookups, will allow the site to comply with minimum density requirements.
5. The site slopes from northeast to southwest; a number of neighbors to the west of the property have expressed concern that site development may exacerbate existing flooding problems. Surface water runoff sheet flows from east to west, with heavier concentrations encountered within drainage swales near the northern and southern boundaries of the property. The Applicant's conceptual drainage plan provides for collection, treatment and detention of runoff from the developed portions of the site. Roadway drainage plus flows from the upland lots will be collected within the drainage system for Northeast 11th Street, then tightlined across the steep slope to the drainage tract in the southwest corner. In addition, as recommended by the Applicant's geotechnical study, seepage from the western lots will be collected within french drains at the top of the steep slope section and also piped to the drainage tract. The steep slopes themselves will be preserved in their natural state within a sensitive areas tract. This combination of strategies will both protect the steep slopes from erosion and convey to the drainage tract a significant percentage of the onsite runoff that currently sheet flows to the west. Overall, flow volumes on the northern half of the property and some flooding impacts should be reduced. While surface water flows from the developed portions of the site will be controlled, the Applicant is under no legal obligation to collect and detain flows from undeveloped portions of the property nor from offsite properties further north.

6. A second drainage issue identified by neighbors concerns the fact that flows now tend to collect along the western property boundary within the undeveloped right of way for 218th Avenue Northeast, then travel south to the cul de sac just offsite from the property's southwest corner. During major storm events the capacity of a 12-inch culvert is occasionally exceeded and runoff overflows to the west. As shown by the Applicant's conceptual drainage plan, flows discharged from the Sammamish Heights Estates' detention pond will bypass this 12-inch culvert, a strategy that will both avoid the bottleneck and reduce the volume of flows that the existing culvert must accommodate.
7. A second area of controversy involves the undeveloped five-acre parcel that lies immediately north of Sammamish Heights Estates. This property is owned by James Guse, who has submitted a number of letters urging the County to require the Applicant to construct a stub road to his common property boundary with the Applicant's parcel. Mr. Guse has an easement from the owner of the Sammamish Heights Estates property allowing him to develop a 30-foot width access road at a location of the grantor's choosing.
8. Mr. Hansen, the plat developer, has offered to publicly dedicate a 40-foot right of way to the northern plat boundary. He has not offered, however, to construct the roadway north of the temporary cul de sac serving Lots 2 and 3 and prefers to angle the right of way toward the plat's northeast corner. Mr. Guse would not only like to see a stub road constructed by the Applicant to his property line, but also prefers an alignment further west along a due north orientation.
9. As argued by Mr. Hansen, the County cannot constitutionally require him to either dedicate right of way or construct a road section that does not benefit his development. Accordingly, Mr. Guse's desire for a road stubbed to the north property line in an alignment of his choosing, whatever its merits from a design standpoint, is beyond the regulatory authority of the County to require. Mr. Hansen's offer to dedicate a 40-foot public right of way angled toward the northeast sit corner therefore must be regarded as totally acceptable and easily fulfills any requirement that could be legally imposed upon the plat. For purposes of clarification, the terms of Mr. Hansen's offer have been incorporated into a revision to Condition No. 8.

The same constitutional limitations apply to Mr. Guse's suggestion that the Applicant provide a paved road in the southwestern corner along the 218th Avenue Northeast right of way. Drainage tract access only requires a gravel road and any construction requirement in excess of that need would impose a regulatory taking.

CONCLUSIONS:

1. If approved subject to the conditions required below, the proposed subdivision makes appropriate provision for the public health, safety and welfare; serves the public use and interest; and meets the requirements of RCW 58.17.110.

2. The conditions of approval imposed herein, including dedications and easements, will provide improvements which promote legitimate public purposes; are necessary to serve the subdivision and are proportional to its impacts; are required to make the proposed plat reasonably compatible with the environment; and will carry out applicable state laws and regulations and the laws, policies and objectives of King County.

DECISION:

The preliminary plat of Sammamish Heights Estates, as revised and received June 18, 1999, is APPROVED, subject to the following conditions of final approval:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base densities and minimum density requirements of the R-6 zone classification. Per KCC 21A.12.060.B.1. All lots shall meet the minimum dimensional requirements of the R-6 zone classification and shall be generally as shown on the face of the approved preliminary plat, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.
4. The applicant must obtain final approval from the King County Health Department.
5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
6. The applicant must obtain the approval of the King County Fire Protection Engineer certifying the adequacy of the fire hydrant, water main, and fire flow to meet the standards of Chapter 17.08 of the King County Code.

If all lots are 35,000 square feet in size or more, or if the subdivision is outside an Urban Growth Area and is developed at a density no greater than one residential building lot per five (5) acres, or a cluster development outside an Urban Growth Area with lots under 35,000 square feet in size and offsetting permanent open space and is developed at a density no greater than one residential building lot per five (5) acres, the subdivision is exempt per KCC 17.08.030.

7. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval, which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the Surface Water Design Manual (SWDM) must also

be satisfied during engineering and final review.

- a. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual. DDES approval of the drainage and roadway plans is required prior to any construction.
- b. Current standard plan notes and ESC notes, as established by DDES Engineering Review shall be shown on the engineering plans.
- c. The following note shall be shown on the final recorded plat:

" Single family residences constructed on lots created by this subdivision must provide perforated stub-out connections according to the details shown on the approved plans. All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with the plans on file."
- d. As specified by the drainage manual, storm water facilities shall be designed using the KCRTS level two flow control standard. Water quality facilities shall also be provided using the sensitive lake protection menu. The final drainage analysis shall evaluate the requirements for off-site bypass as outlined in the drainage manual on page 1-36. All runoff control facilities shall be located in a separate tract and dedicated to King County.
- e. To minimize disturbance on the steep slopes, drainage shall be conveyed to the storm water tract using an above ground tightline system with proper pipe support and energy dissipation at the outfall. Design requirements for the pipe system are provided in Chapter 4 of the drainage manual. Storm water from roof tops, foundation drains, and other developed areas shall be piped to a suitable conveyance system and shall not be discharged onto steep slope areas. The primary conveyance pipe traversing steep slopes shall be designed to accommodate flows for the 100-year storm under developed site conditions. A drainage easement shall be provided for portions of the conveyance system extending through an individual lot or sensitive area tract.
- f. A supplemental geotechnical report shall be submitted with the engineering plans to address design requirements for the control of potential groundwater at the toe of slope adjacent to the storm water detention pond. The report shall also provide recommendations regarding designs for steep slope pipe conveyance, including the construction of catch basins and conveyance pipe adjacent to buffers at the top and toe of slope. Any proposed intrusion and/or clearing of vegetation within the steep slope buffer must comply with the county regulations regarding sensitive areas and shall be approved

8. The proposed subdivision shall comply with the 1993 King County Road Standards (KCRS) including the following requirements:
 - a. The on-site road extending from NE 11th Street shall be dedicated for public use and improved as an urban subaccess street. To comply with KCRS 2.08.D, the temporary cul-de-sac shall be moved northerly to a location where the temporary easements are located only upon lots 2 and 3. A 40-foot wide public right of way shall be dedicated but not constructed by the Applicant from the temporary cul de sac to the north plat property line.
 - b. Three feet of additional road right-of-way shall be dedicated along the west property line.
 - c. As required by KCRS 5.03, street trees should be included in the design of all road improvements.
 - d. Modifications to the above road conditions may be considered by King County pursuant to the variance procedures in KCRS 1.08.
9. King County Code 16.82.150D requires seasonal limitations for construction within the East Sammamish Community Planning area. During the period October 1 through March 31, clearing and grading is not allowed unless certain provisions are complied with as outlined in the code. The applicant's engineering plans and construction procedures shall demonstrate compliance with the applicable code requirements.
10. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
11. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
12. Lots within this subdivision are subject to King County Code 21A.43, which imposes impact fees to fund school system improvements needed to serve new development. As a condition of final approval, fifty percent (50%) of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.

13. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE
AREAS AND BUFFERS**

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer. This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

14. The proposed subdivision shall comply with the Sensitive Areas Ordinance as outlined in KCC 21A.24.
- a. Determine the top, toe, and sides of 40% slopes by field survey. Provide a 35-foot buffer from the top of slope and a 25-foot buffer from the toe of slope.
 - b. The steep slopes and their respective buffer(s) shall be placed in a Sensitive Area Tract (SAT).
 - c. A minimum building setback line of 15 feet shall be required from the edge of the SAT.
 - d. Permanent survey marking and signs as specified in KCC 21A.24.160 shall also be addressed prior to final plat approval.
 - e. Temporary marking of sensitive areas and their buffers (e.g. with bright orange construction fencing) shall be placed on the site and shall remain in place until all construction activities are completed.

15. Suitable recreation space shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e.. Sport courts, children's play equipment, picnic tables, benches, etc).
 - a. An overall conceptual recreation space plan shall be submitted for review and approval by DDES, with the submittal of the engineering plans. This plan shall include location, area calculations [minimum 500 square feet], dimensions, and general improvements. The approved engineering plans shall be consistent with the overall conceptual plan. A fee in lieu of recreation space shall be provided for the remaining area [approximately 3010 square feet] not provided on site.
 - b. A detailed recreation space plan (i.e., landscape specs, equipment specs, etc.) consistent with the overall conceptual plan, as detailed in item a., shall be submitted for review and approval by DDES and King County Parks and Recreation prior to or concurrent with the submittal of the final plat documents.
 - c. A performance bond for recreation space improvements shall be posted prior to recording of the plat.
16. A homeowners' association or other workable organization shall be established to the satisfaction of DDES, which provides for the ownership and continued maintenance of the recreation and/or sensitive area tracts(s).

ORDERED this 16th day of July, 1999.

Stafford L. Smith, Deputy
King County Hearing Examiner

TRANSMITTED this 16th day of July, 1999, to the following parties and interested persons:

Kazoko & Bill Acar
Debra Anderson
Jack & Jennifer Bauer
Joseph Beer
Jo Bellflower
Mary Bonnofsky
Robert Brady
Les Brisbois
Daryl Brooke
Joanna Buehler
Anita Burkholder
Jon & Donna Carlson
Kyle & Evelyn Coffey
Richard A. Cook

Craig & Therese Dickison
Roger Dorstad
Vali Eberhardt
Kathy Edens
Becky Edwards
Evelyn Ferrier
Sharon Freechtle
Lee & Mary Geil
John & Debra Gibbons
Rick Gibbons
Robert Gilmore and Dee Chanson
Gerald and Cherie Gritsch
Jim Guse
Judith Hamilton

Scott Hamilton
Jerry Hansen
Tom & Jeanne Harman
Nancy Herrig
Kim Hess
Lori Hill
Alan Huibregtse
James & Therese Hutchins
Robert Iness
Cris Irons
David Irons
Lesley Johnson
Jon Nelson
James Jordan
John & Cathy Kaschko
Bob & Shannon Keller
King County Envir Health Division
Sharon Kokulak
Darla Kurkijy
Dave Lerner
Francis J Lill
Paula Lillevand
William A. Looney
Arlene & Todd Lovell
Andrea & Paul Martin
Joe and Claudette Martineau
Jon & Kristen Mathison
Linda Matlock
Michael McCalmont
Greg McCormick
Kirk & Cristal Meidinger
Michael Mickiewicz
Dave & Leslie Miniken
Debra & James Montgomery
Eleanor Moon
Brian Moore
Ben Muzzey
Robert Nason
Jon Nelson
Andy Olney
Dan & Audrey Oxley
Pacific Motion Group
Dorothy & Ed Parker
Steve Parmelee
Tom Perricone
Raymond & Joan Petit
Andrea and Doug Phillips
Charlene & Larry Plympton

Michael Poling
Dana and Diana Postlewaite
Nick & Suzy Repanich
Mara Rigel
Helen & Jesse Rondestvedt
Dwight & Mary Roof
Robert & Margaret Rowe
Nancy Ryan
Alfred & Vivian Sauerbrey
Deb Schaefer
Penny Short
Mark Smith
Patty & Greg Smith
Mary & Tom Spencer
Vilma Sriram
Ilene Stahl
Brian & Sharon Steinbis
Kathleen Steoger
Wayne Stewart
Patrick and Linda Sutcliffe
Liz Tickman
Eric Tingstad
Di Vittitoe
Janet Wall & Ruth Morgan
Wilson Walp
Victoria Ward

Drew and Debbie Weaver
Clinton Webb
Cory and Marylou Wolfe
Greg Borba
Steve Bottheim
Laura Casey
Kim Claussen
Peter Dye
Dick Etherington
Kristen Langley
Aileen McManus
Lance Moreno
Steven C. Townsend

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) **on or before July 30, 1999**. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council **on or before August 6, 1999**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

Stafford L. Smith was the Hearing Examiner in this matter. Participating at the hearing were Kim Claussen and Peter Dye, representing the County; John Nelson, Jerry Hansen, Chanson Dee, Robert Gilmore, Wilson Walp and James Guse.

The following exhibits were offered and entered into the hearing record:

- Exhibit No. 1 Department of Development and Environmental Services File No. L98P0040
- Exhibit No. 2 Department of Development and Environmental Services preliminary report dated June 29, 1999
- Exhibit No. 3 Application dated October 5, 1998

- Exhibit No. 4 Environmental checklist dated October 5, 1998 (received)
- Exhibit No. 5 Declaration of nonsignificance dated May 19, 1999
- Exhibit No. 6 Affidavit of Posting indicating June 2, 1999, as date of posting and June 3, 1999, as the date the affidavit was received by the Department of Development and Environmental Service
- Exhibit No. 7 Plat map dated June 18, 1999 (received revision)
- Exhibit No. 8 Land use map 950 E & W
- Exhibit No. 9 Assessors maps SW & SE 28-25-6
- Exhibit No. 10 Conceptual drainage plan (received October 5, 1998)
- Exhibit No. 11 Geotech study by Geotech Consultants dated September 1998
- Exhibit No. 12 Revisions to staff report
- Exhibit No. 13 Wetland and stream reconnaissance prepared by Adolfson Associates, Inc. dated November 30, 1998
- Exhibit No. 14 Letters dated February 19, 1999, and May 25, 1999, from James A. Guse (Guse and Associates) regarding access
- Exhibit No. 15 Original easement reservation document and Amendment No. 5 to Vacant Land Purchase and Sale Agreement between William A. Looney and Hansen Investment LLC dated October 31, 1997
- Exhibit No. 16 Two revisions to plat map submitted by Applicant at hearing
- Exhibit No. 17 Possible road extension to Guse property submitted by Applicant at hearing
- Exhibit No. 18 Letter dated November 27, 1999, from James Guse to Lance Moreno (DDES)
- Exhibit No. 19 Letter dated May 25, 1999, from James Guse to Jerry Hanson [*sic*]
- Exhibit No. 20 Luxembourg v. Snohomish County, 76 Wn.App. 502, 887 P.2d 446 and Burton v. Clark County, 90 Wn.App. -